

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0610P
Adjusted Gross Income Tax
Calendar Years 1992, 1993, 1994, 1995

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, in a telephone call on November 12, 1998 and a letter dated the same date protested the penalty assessed

Taxpayer is a Pennsylvania corporation with several divisions in Indiana. At audit, the taxpayer was assessed additional adjusted gross income tax primarily to include throwback sales in the sales factor numerator for 1992 and 1993. In 1994 and 1995 the taxpayer correctly included throwback sales but failed to amend returns for 1992 and 1993.

I. **Tax Administration** – Penalty

DISCUSSION

At issue is whether the taxpayer was negligent in filing its tax returns and remitting tax due.

A review of the audit indicates the taxpayer failed to include throwback sales in the sales factor

numerator for 1994 and 1995. In addition the taxpayer had errors in gross income tax which did not affect the audit results; failed to add back taxes, and correctly calculate the apportionment factor in all areas.

Taxpayer thereby underreported adjusted gross income tax by 20% for 1992 and 30% in 1993. Although the taxpayer made the adjustment for throwback sales in 1994 and 1995, it failed to amend returns for the prior years.

Taxpayer protests the penalty and states that it should be waived because they also have five other companies that pay tax to Indiana.

Department records indicate the assessment stems primarily from the failure to include the throwback sales, the issue which is clear in the Indiana Code and Regulations.

FINDING

Taxpayer's protest is denied.